

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA

v.

JOHN JENNINGS, II

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Case No.: 3:06cr126-WHA

UNOPPOSED MOTION TO CONTINUE TRIAL

COMES NOW the Defendant, John Jennings, II, by and through undersigned counsel, Kevin L. Butler, and moves this Court, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), (h)(8)(B)(I), (h)(8)(B)(ii), and (h)(8)(B)(iv) for a continuance of his trial setting of October 24, 2006 until on or after January 8, 2007. In support of this motion, Defendant would show:

1. Mr. Jennings is charged with using the mail (or means of commerce) to knowingly induce a person who has not attained the age of 18 to engage in sexual activity in violation of 18 U.S.C. § 2251(a).
2. Mr. John Jennings II, is 23 years old and mentally retarded. He was enrolled in special education courses until the age of 20. His verbal intellectual quotient (IQ) has been determined to be, at best, 76. Mr. Jennings' thought process is often tangential and "Mr. Jennings will struggle when faced with lengthy or detailed verbal explanations of various issues." See Docket #19, BOP Forensic Psychiatric Report at p.7.¹ He is capable of understanding some written information if it is presented to him in a simplistic way and in

¹ The defense is still attempting to locate and retrieve a complete set of Mr. Jennings' mental health and academic records. However, Mr. Jennings was arrested in Houston, Texas and all relevant documents and records are located outside of the Middle District of Alabama.

simplistic terms. Id. However, to help insure comprehension, when possible, pictures and charts should be used when communicating with him. Id. Undersigned counsel has also learned that Mr. Jennings may have been physically and sexually abused as a minor.

3. Prior to his arrest on these charges, Mr. Jennings resided in Houston, TX with his step-father and mother. All material and relevant mental/physical health and education material and relevant records are located outside of this district (i.e. Houston, TX).
4. In addition to investigating Mr. Jennings' personal background, undersigned counsel is presently working in conjunction with a clinical/forensic psychologist to determine Mr. Jennings' current and past ability to understand the nature of these proceedings and the questioning which led to statements and consents he provided to law enforcement. The records being sought in Houston, TX will be of assistance to the clinical/forensic psychologist in her review and analysis of the defendant's psychiatric and mental health conditions.
5. Finally, in addition to gathering personal information and conducting psychiatric testing, undersigned counsel is making arrangements to travel to Houston, TX to interview witnesses the government asserts allegedly observed Mr. Jennings engage in inappropriate behavior with other minors.
6. All of the information sought through the defense's case investigation will be relevant, material and necessary for trial of this matter, necessary to determine Jennings' competence, necessary for effective plea negotiations and necessary for the Court to exercise meaningful sentencing authority.
7. However, given the remote location of the necessary information and the time required to

complete a psychiatric evaluation, the defense investigation will not be completed on or before the presently scheduled August 7, 2006 trial date. Therefore, it is in the interest of justice to continue this matter.

8. Requests for a continuance are addressed to the sound discretion of the trial court. United States v. Darby, 744 F.2d 1508, 1521 (11th Cir. 1984), reh. denied 749 F.2d 733, cert. denied 471 U.S. 1100 (1985). A continuance in order to allow defense counsel "the reasonable time necessary for effective preparation" for trial is one of the factors considered significant by the Speedy Trial Act. United States v. Davenport, 935 F.2d 1223, 1235 (11th Cir. 1991); 18 U.S.C. 3161 (h)(8)(B)(iv). The Eleventh Circuit has repeatedly recognized that a continuance in order to provide adequate preparation by counsel serves the ends of justice. United States v. Goetz, 826 F.2d 1025, 1028 (11th Cir. 1987) (upholding, against speedy trial claim, a continuance of eighty days to allow new counsel to prepare for trial); United States v. Elkins, 795 F.2d 919, 924 (11th Cir. 1986), cert. denied 479 U.S. 952 (1986) (upholding against speedy trial claim, a continuance to allow new counsel time to prepare); United States v. Sarro, 742 F.2d 1286, 1300 (11th Cir. 1984), reh, denied 751 F.2d 394 (1984). In this case, the ends of justice will be served by allowing the defense adequate time to locate all information relevant and necessary to prepare a defense to the charges and determine Mr. Jennings' competence.
9. Additionally, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), (h)(8)(B)(I), (h)(8)(B)(ii), and (h)(8)(B)(iv) , this court has authority to continue trial to allow counsel time to investigate this complex case and determine Mr. Jennings' mental competency.
10. The United States, through Assistant United States Attorney Susan Redmond, does not

oppose the granting of a continuance.

11. Because (1) the defense is not certain Mr. Jennings is competent to proceed and is presently arranging a competency evaluation and (2) Mr. Jennings has a limited ability to understand written information, a waiver of speedy trial is not attached to this motion.

WHEREFORE, for the foregoing reasons, Mr. Jennings respectfully requests that his trial date be continued from the presently scheduled date of October 24, 2006 until on or after January 8, 2007.

Dated this 29th day of September 2006.

Respectfully submitted,

s/ Kevin L. Butler
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Susan Redmond, Esquire
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, Alabama 36104

Respectfully submitted,

s/ Kevin L. Butler
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